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No. 2772

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United States

Circuit Court of Appeals

For the Ninth Circuit.

FRED STEBLER,

Appellant,

vs.

RIVERSIDE HEIGHTS ORANGE GROW-
ERS' ASSOCIATION, a Corporation, and
GEORGE D. PARKER,

Appellees.

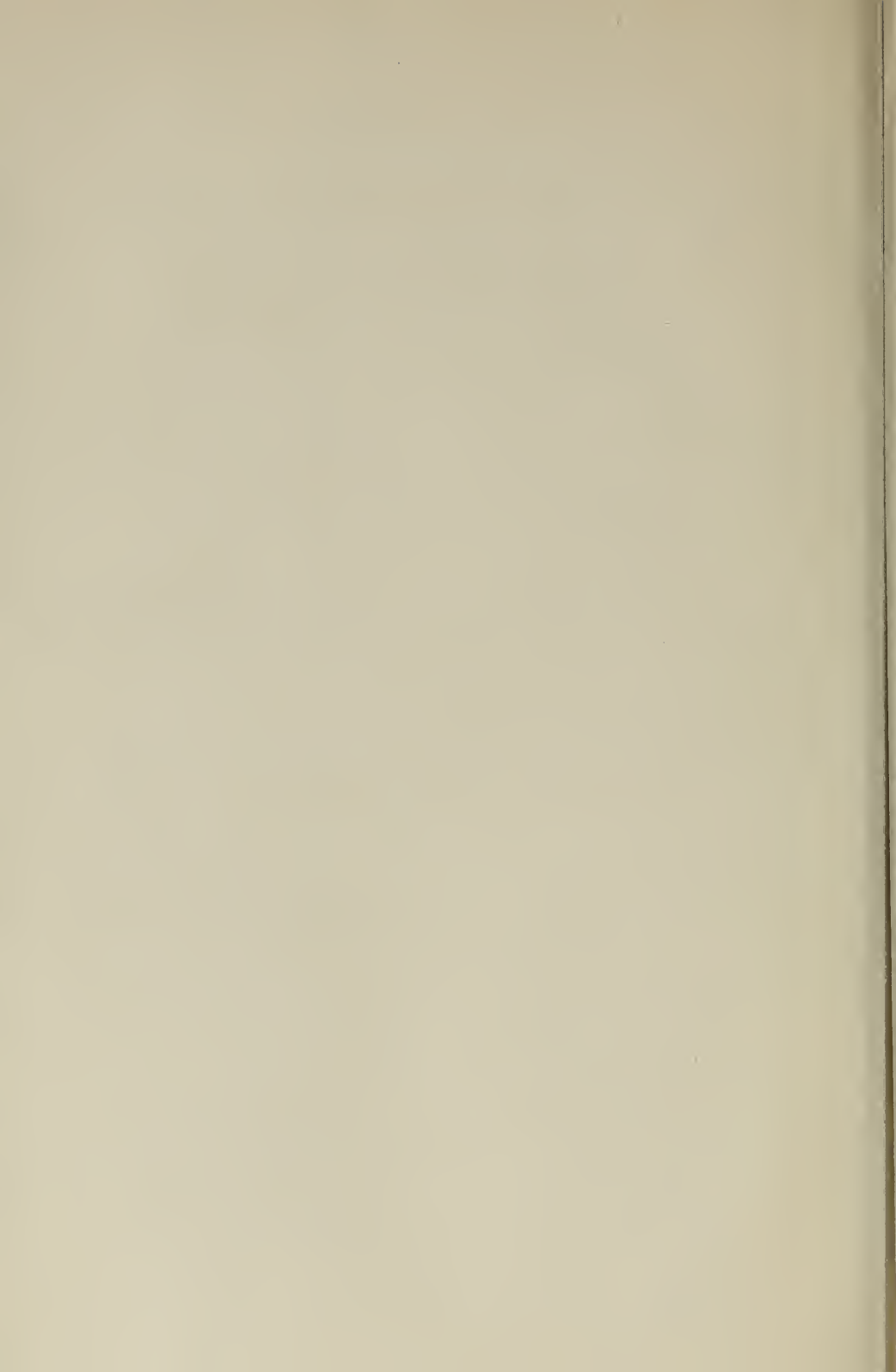
Transcript of Record.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

Filed

APR 12 1916

F. D. Monckton,



United States
Circuit Court of Appeals

For the Ninth Circuit.

FRED STEBLER,

Appellant,

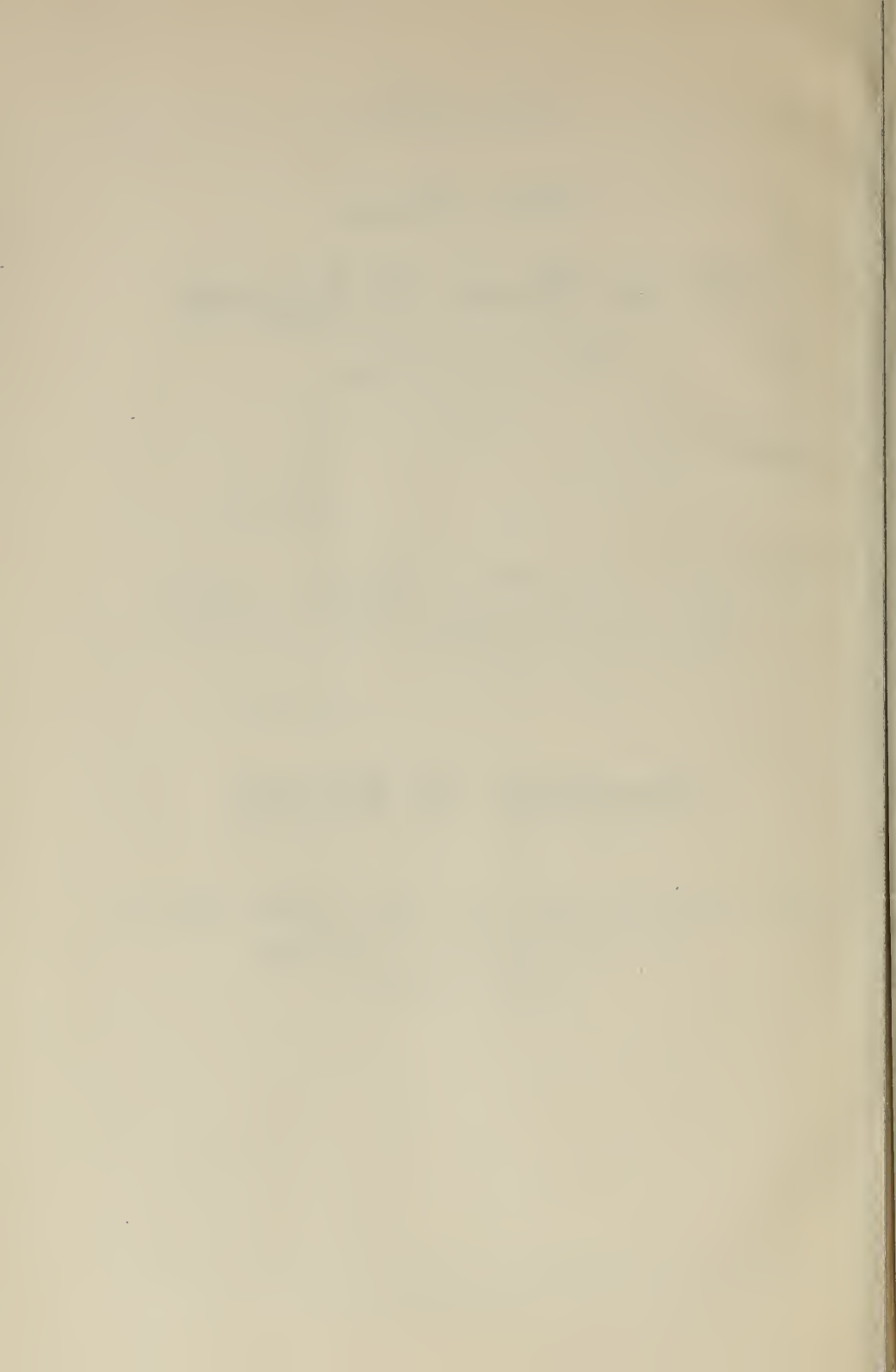
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Appellees.

Transcript of Record.

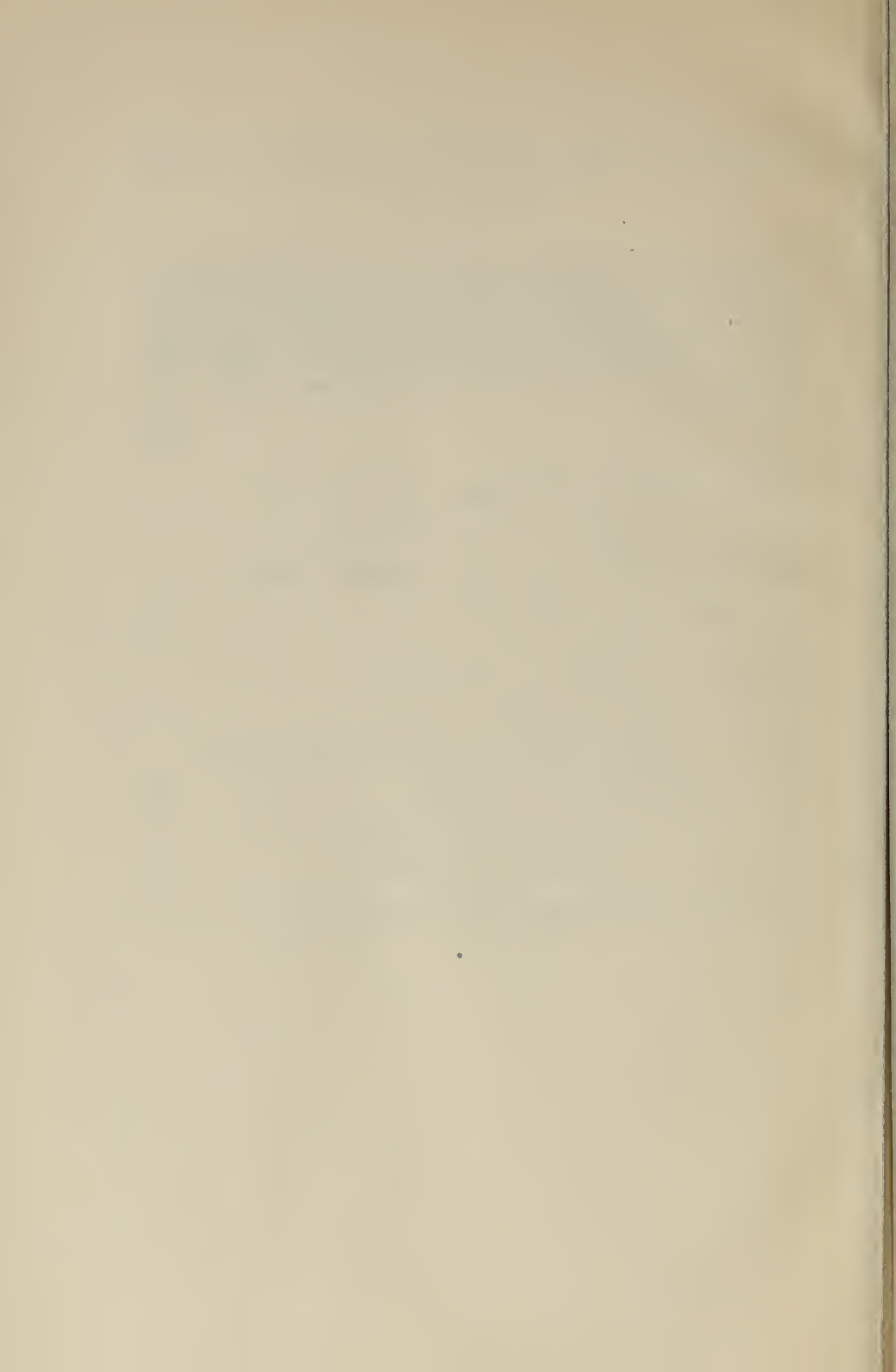
Upon Appeal from the United States District Court for
the Southern District of California,
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

For Appellant:

FREDERICK S. LYON, Esq., Merchants Trust
Building, Los Angeles, California.

For Appellees:

NICHOLAS A. ACKER, Esq., Foxcroft Build-
ing, San Francisco, California. [3*]

Citation [on Appeal].

UNITED STATES OF AMERICA,—ss.

The President of the United States to Riverside
Heights Orange Growers' Association and
George D. Parker, Greeting:

You are hereby cited and admonished to be and
appear at a United States Circuit Court of Appeals
for the Ninth Circuit, to be holden at the city of San
Francisco, in the State of California, within thirty
(30) days from the date hereof, pursuant to an order
allowing an appeal rendered and of record in the
clerk's office of the United States District Court for
the Southern District of California, Southern Divi-
sion, in suit in Equity, Cir. Ct. No. 1562 therein, and
wherein you are defendants and appellees and Fred
Stebler is the complainant and appellant, to show
cause, if any there be, why the decree of said court
made and entered on October 30th, 1915, should not
be corrected, and why speedy justice should not be
done to the parties in that behalf.

WITNESS the Honorable OSCAR A. TRIPPET,

*Page-number appearing at foot of page of original certified Record.

United States District Judge for the Southern District of California, Southern Division, this 18th day of February, 1916.

OSCAR TRIPPET,

United States District Judge.

Due service of a copy of the above Citation is hereby acknowledged this 25 day of February, 1916.

N. A. ACKER,

Solicitor for Defendants and Appellees. [4]

[Endorsed]: C. C. No. 1562. U. S. District Court, Southern District of California. Fred Stebler v. Riverside Heights Orange Growers' Association, et al. Citation. Filed Feb. 28, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

C. C.—No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION, GEORGE D. PARKER, and PARKER MACHINE WORKS,

Defendants. [5]

*United States District Court, Southern District of
California, Southern Division.*

IN EQUITY—Cir. Ct. No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS'
ASSOCIATION and GEORGE D. PAR-
KER,

Defendants.

Stipulation [Re Transcript of Record, etc.].

The defendants in the above-entitled suit having heretofore taken an appeal from the Final Decree of this court in said suit dated, made and entered October 30, 1915, and having caused a transcript of record therein on said appeal to be prepared and certified for filing in the United States Circuit Court of Appeals for the Ninth Circuit, and said transcript of record containing and embodying the proofs taken before the Special Master on the accounting herein and complainant having now taken an appeal from the said Decree to the same court and involving questions to be determined upon the proceedings and proofs educed before said Special Master all of which form a part of said transcript of record so prepared on defendant's said appeal;

It is hereby stipulated and agreed by and between the parties that complainant's appeal from said Decree be heard, submitted and determined upon the said transcript of record [6] thus avoiding ex-

pense to the parties and that the said appeal be heard and submitted at one and the same hearing.

FREDERICK S. LYON,
Solicitor for Complainant.
N. A. ACKER,
Solicitor for Defendants.

[Endorsed]: No. 1562. United States District Court, Southern District of California, Southern Division. Fred Stebler, Plaintiff, vs. Riverside Heights Orange Growers' Assn., *et ano.*, Defendants. In Equity. Stipulation. Frederick S. Lyon, 504-7 Merchants Trust Building, Los Angeles, Cal., Solicitors for Plaintiff. [7]

United States District Court, Southern District of California, Southern Division.

IN EQUITY—Cir. Ct. No. 1562.

FRED STEBLER,

Complainant.

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS'
ASSOCIATION, and GEORGE D. PARKER,

Defendants.

Petition for Order Allowing Appeal.

The complainant, Fred Stebler, conceiving himself *aggrieved* by the Final Order or Decree made and entered by said Court in the above-entitled cause on October 30th, 1915, confirming the Master's Report

and granting judgment thereon as in said decree set forth, comes now and petitions said Court for an order allowing him to prosecute an appeal from said order or decree the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided and also that an order be made fixing the sum of security which complainant shall give and furnish upon such appeal.

FREDERICK S. LYON,

Solicitor and of Counsel for Complainant.

[Endorsed]: No. 1562. United States Circuit Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Assn., *et ano.*, Defendants. In Equity. Petition for Order Allowing Appeal. Filed Feb. 14, 1916. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Frederick S. Lyon, 504-7 Merchants Trust Building, Los Angeles, Cal. Solicitor for Complainant. [8]

United States District Court, Southern District of California, Southern Division.

IN EQUITY—Cir. Ct. No. 1562.

FRED STEBLER,

Complainant.

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS'
ASSOCIATION and GEORGE D. PARKER,
Defendants.

Assignment of Error.

COMES NOW the complainant above named and specifies and assigns the following as the errors upon which he will rely upon his appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree entered herein on October 30th, 1915, confirming the Master's Report and granting allowing and awarding judgment against defendants as in said decree set forth: That the District Court of the United States for the Ninth Circuit, Southern District of California, Southern Division, erred as follows:

1. In overruling and in not sustaining complainant's first exception to the report of the Special Master herein and in not excluding the allowance or deduction of "overhead expense" as in said exception set forth.

2. In overruling and in not sustaining complainant's second exception to the report of the Special Master herein [9] and in not awarding to complainant the full profits realized by defendants and each of them from the infringements herein and the full damages suffered by the complainant by reason of defendants' infringement; and in apportioning such profits and damages to simply the "sizers independent of the bins and distribtuting system" and in not ascertaining said profits and damages upon the infringing machines as a whole.

3. In overruling and in not sustaining complainant's third exception to the Master's Report.

4. In overruling and in not sustaining complain-

ant's fourth exception to the Master's Report.

In order that the foregoing assignments of error may appear of record the complainant presents the same to the Court and prays that such disposition may be made thereof as is in accordance with the laws of the United States.

WHEREFORE complainant prays that the said final decree of this Court made and entered on October 30th, 1915, be reversed and that the United States District Court for the Southern District of California, Southern Division, be directed to modify the said Decree in accordance with the exceptions of complainant to said Master's Report and in accordance with each of said exceptions.

FREDERICK S. LYON,

Solicitor and of Counsel for Complainant. [10]

[Endorsed]: No. 1562. United States Circuit Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Assn., *et ano.*, Defendants. In Equity. Assignments of Error. Filed Feb. 14, 1916. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Frederick S. Lyon, 504-7 Merchants Trust Building, Los Angeles, Cal., Solicitor for Complainant. [11]

*United States District Court, Southern District of
California, Southern Division.*

IN EQUITY—Cir. Ct. No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROW-
ERS' ASSOCIATION and GEORGE D.
PARKER,

Defendants.

Order Allowing Appeal.

In the above-entitled cause the complainant having filed his petition for an order allowing an appeal from the final decree of this Court made and entered on October 30th, 1915, confirming the Master's Report, and granting and allowing and awarding judgment against the defendants herein as in said decree set forth, together with assignments of error;

Now upon motion of Frederick S. Lyon, Esq., Solicitor for complainant, it is ordered that said appeal be and hereby is allowed the complainant to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree heretofore filed and entered as aforesaid and that the amount of complainant's bond on said appeal be and the same is hereby fixed at the sum of \$250 the same to act as a bond for costs upon the said appeal. [12]

Dated February 14th, 1916.

TRIPPET,
District Judge.

[Endorsed]: No. 1562. United States Circuit Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Assn., *et ano.*, Defendants. In Equity. Order Allowing Appeal. Filed Feb. 14, 1916. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Frederick S. Lyon, 504-7 Merchants Trust Building, Los Angeles, Cal., Solicitor for Complainant. [13]

United States District Court, Southern District of California, Southern Division.

IN EQUITY—Cir. Ct. No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS' ASSOCIATION and GEORGE D. PARKER,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, that Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, and duly licensed to transact business in the State of California, is held and firmly bound unto Riverside Heights Orange Growers' Association and George D. Parker, defendants, in the above-entitled suit, in the penal sum of Two Hundred and Fifty Dollars (\$250), to be paid to

the said Riverside Heights 'Orange Growers' Association and George D. Parker, their heirs and assigns, for which payment, well and truly to be made, the Fidelity and Deposit Company of Maryland binds itself, its successors, and assigns firmly by these presents.

Sealed with corporate seal and dated this 15th day of February, 1916.

The condition of the above obligation is such that whereas the said Fred Stebler, complainant in the above-entitled suit, is about to take an appeal to the United States Circuit [14] Court of Appeals for the Ninth Circuit, to reverse an order or decree made, rendered and entered on the 30th day of October, 1915, by the District Court of the United States, for the Southern District of California, Southern Division, in the above-entitled cause confirming the report of the Special Master in said cause and granting judgment thereon as in said decree set forth,

NOW, THEREFORE, the condition of the above obligation is such that if Fred Stebler shall prosecute his said appeal to effect and answer all costs which may be adjudged against him if he fail to make good his appeal, then this obligation shall be void; otherwise to remain in full force and effect.

FIDELITY AND DEPOSIT CO. OF
MARYLAND.

By HARRY D. VANDEVEER,

[Seal]

Attest: J. HOMER NISHWITZ,

Agent.

State of California,
County of Los Angeles,—ss.

On this 15th day of February, 1916, before me C. M. Evarts, a notary public in and for the said county of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Harry D. Vandever, known to me to be the attorney in fact, and J. Homer Nishwitz, known to me to be the agent of the Fidelity and Deposit Company of Maryland, the corporation that executed the within instrument, and acknowledged to me that they subscribed the name of the Fidelity and Deposit [15] Company of Maryland thereto and their own names as attorney in fact and agent, respectively.

[Seal] E. M. EVARTS,
Notary Public in and for the County of Los Angeles,
State of California.

Approved 2/18/16.

OSCAR A. TRIPPET,
Judge.

[Endorsed]: No. 1562. United States Circuit Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Riverside Heights Orange Growers' Assn. *et ano.*, Defendants. In Equity. Bond on Appeal. The Within Bond and Surety Thereon is Hereby Approved *This Day* of February, 1916. ———, District Judge. Frederick S. Lyon, 504-7 Merchants Trust Building, Los Angeles, Cal., Solicitor for Complainant. Filed Feb. 18, 1916. Wm. M Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [16]

UNITED STATES OF AMERICA.

*District Court of the United States, Southern
District of California, Southern Division.*

Clerk's Office.

No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROW-
ERS' ASSOCIATION and GEORGE D.
PARKER,

Defendants.

Praeipce [for Transcript of Record].

To the Clerk of Said Court:

Sir: Please issue a transcript of record on appeal in the above-entitled suit in accordance with the order allowing complainant an appeal from the decree of October 30, 1915, in the above-entitled suit, consisting of certified copies of the following, to wit: Petition for Order Allowing Appeal;

Assignments if Error;

Order Allowing Appeal;

Bond on Appeal;

Stipulation of the Parties, Hereto Attached.

FREDERICK S. LYON,

Solicitor for Complainant. [17]

Due service and a receipt of a copy of the fore-

Riverside Heights Orange Growers' Assn. et al. 13
going Praeceptum is hereby admitted this 24 day of
February, 1916.

N. A. ACKER,
Solicitor and of Counsel for Defendants and Appel-
lees.

[Endorsed]: No. 1562. U. S. District Court,
Southern District of California, Southern Division.
Fred Stebler, Complainant, vs. Riverside Heights
Orange Growers' Assn., *et ano.*, Defendants. Prae-
ceptum for Transcript of Record. Filed Feb. 28, 1916.
Wm. M. Van Dyke, Clerk. By Chas. N. Williams,
Deputy Clerk. [18]

[Certificate of Clerk U. S. District Court to
Transcript of Record.]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

C. C.—No. 1562.

FRED STEBLER,

Complainant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS'
ASSOCIATION, GEORGE D. PARKER, and
PARKER MACHINE WORKS,

Defendants.

I, Wm. M. Van Dyke, Clerk of the District Court
of the United States of America, in and for the
Southern District of California, do hereby certify
the foregoing eighteen (18) typewritten pages, num-

bered from 1 to 18, inclusive, to be a full, true and correct copy of the Stipulation that complainant's appeal may be heard, submitted and determined upon Transcript of Record on Appeal of Defendants, Petition for Order Allowing Appeal, Assignments of Error, Order Allowing Appeal, Bond on Appeal, and Praeceptum for Preparation of Transcript on Appeal, in the above and therein entitled cause, and that the same together constitute the Transcript upon Appeal of Fred Stebler, in accordance with the Praeceptum for Preparation of Transcript filed in my office on behalf of the appellant by his solicitor of record.

I do further certify that the cost of the foregoing [19] Transcript on Appeal is \$7 50/100, the amount whereof has been paid me by said appellant.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court of the United States of America, in and for the Southern District of California, Southern Division, this 29th day of March, in the year of our Lord, one thousand nine hundred and sixteen, and of our Independence the one hundred and fortieth.

[Seal] WM. M. VAN DYKE,
Clerk of the District Court of the United States of
America, in and for the Southern District of
California.

By Chas. N. Williams,
Deputy Clerk.

[Ten-cent Internal Revenue Stamp. Cancelled
3/29/16. C. N. W.] [20]

[Endorsed]: No. 2772. United States Circuit Court of Appeals for the Ninth Circuit. Fred Stebler, Appellant, vs. Riverside Heights Orange Growers' Association, a Corporation, and George D. Parker, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed March 30, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Order Extending Time to April 5, 1916, to File
Record and Docket Cause.]

*In the United States Circuit Court of Appeals, Ninth
Judicial Circuit.*

FRED STEBLER,

Appellant,

vs.

RIVERSIDE HEIGHTS ORANGE GROWERS'
ASSOCIATION and GEORGE D. PARKER,
Appellees.

Good cause appearing therefor, it is hereby Ordered, that the time heretofore allowed said appellant to docket said cause and file the record thereof with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is

hereby enlarged and extended to and including the 5th day of April, 1916.

Dated at Los Angeles, California, nunc pro tunc as of March 15, 1916.

OSCAR A. TRIPPET,
District Judge.

It is hereby stipulated that the above order may be made and entered nunc pro tunc as of March 15, 1916.

FREDERICK S. LYON,
Attorney for Appellant.
N. A. ACKER,
Attorney for Appellees.

[Endorsed]: No. 2772. United States Circuit Court of Appeals for the Ninth Circuit. Fred Stebler, Appellant, vs. Riverside Heights Orange Growers' Association et al., Appellees. Order Extending Time to File Record. Filed Mar. 31, 1916. F. D. Monckton, Clerk.